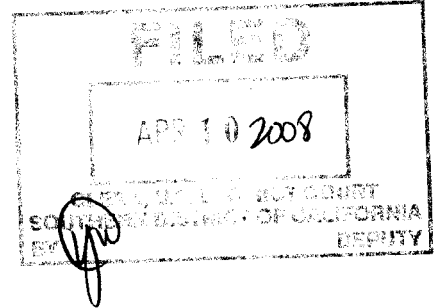


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Attorneys for Plaintiff  
UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

08CR1123-WQH

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
JAVIER HERRERA-DIAZ (2), )  
 )  
Defendant. )

Magistrate Case No. 08MJ0801

**STIPULATION OF FACT AND JOINT  
MOTION FOR RELEASE OF  
MATERIAL WITNESS(ES) AND  
ORDER THEREON**

**(Pre-Indictment Fast-Track Program)**

**IT IS HEREBY STIPULATED AND AGREED** between the plaintiff, UNITED STATES OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and Jeffrey D. Moore, Assistant United States Attorney, and defendant JAVIER HERRERA-DIAZ, by and through and with the advice and consent of Jack J. Boltax, counsel for defendant, that:

1. Defendant agrees to execute this stipulation on or before the first preliminary hearing date and to participate in a full and complete inquiry by the Court into whether defendant knowingly, intelligently and voluntarily entered into it. Defendant agrees further to waive indictment and plead guilty to the pre-indictment information charging defendant with a non-mandatory minimum count of Transportation of Aliens and Aiding and Abetting, in violation of 8 U.S.C. §1324(a)(1)(A)(ii) and (v)(II).

//

JDM:rp:4/10/08

1           2. Defendant acknowledges receipt of a plea agreement in this case and agrees to  
2 provide the signed, original plea agreement to the Government not later than five business days  
3 before the disposition date set by the Court.

4           3. Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or  
5 before **April 14, 2008**.

6           4. The material witnesses, Miguel Angel Avalos-Torres and Martin Mendez-Morales,  
7 in this case:

8           a. Are aliens with no lawful right to enter or remain in the United States;

9           b. Entered or attempted to enter the United States illegally on or about  
10 March 11, 2008;

11           c. Were found in a vehicle driven by <sup>co-</sup>defendant near Rancho San Diego,  
12 California and that defendant knew or acted in reckless disregard of the fact that they were aliens  
13 with no lawful right to enter or remain in the United States;

14           d. Were paying \$1,500-\$1,800 to others to be brought into the United States  
15 illegally and/or transported illegally to their destination therein; and,

16           e. May be released and remanded immediately to the Department of Homeland  
17 Security for return to their country of origin.

18           5. After the material witnesses are ordered released by the Court pursuant to this  
19 stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any  
20 reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding,  
21 including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

22           a. The stipulated facts set forth in paragraph 4 above shall be admitted as  
23 substantive evidence;

24           b. The United States may elicit hearsay testimony from arresting agents  
25 regarding any statements made by the material witness(es) provided in discovery, and such testimony  
26 shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against interest  
27 of (an) unavailable witness(es); and,

28 Stipulation of Fact and Joint Motion for Release of  
Material Witness(es) And Order Thereon in  
United States v. Javier Herrera-Diaz

1 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),  
2 "testimonial" hearsay statements are not admissible against a defendant unless defendant confronted  
3 and cross-examined the witness(es) who made the "testimonial" hearsay statements, defendant  
4 waives the right to confront and cross-examine the material witness(es) in this case.

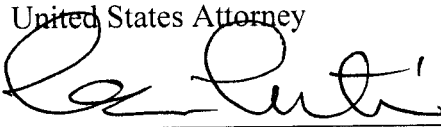
5 6. By signing this stipulation and joint motion, defendant certifies that defendant has  
6 read it (or that it has been read to defendant in defendant's native language). Defendant certifies  
7 further that defendant has discussed the terms of this stipulation and joint motion with defense  
8 counsel and fully understands its meaning and effect.

9 Based on the foregoing, the parties jointly move the stipulation into evidence and for the  
10 immediate release and remand of the above-named material witness(es) to the Department of  
11 Homeland Security for return to their country of origin.

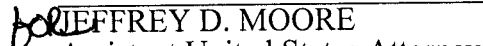
12 It is STIPULATED AND AGREED this date.

13 Respectfully submitted,

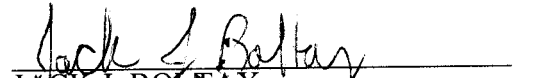
14 KAREN P. HEWITT  
United States Attorney

15 

16 Dated: 4-10-08.

17   
JEFFREY D. MOORE  
Assistant United States Attorney

18 Dated: 4-10-08.

19   
JACK J. BOLTAX  
Defense Counsel for Javier Herrera-Diaz

20  
21 Dated: 4-10-08.

22   
JAVIER HERRERA-DIAZ  
Defendant

**ORDER**

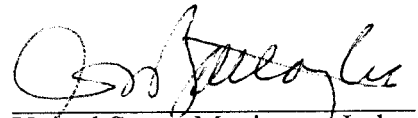
Upon joint application and motion of the parties, and for good cause shown,

**THE STIPULATION** is admitted into evidence, and,

**IT IS ORDERED** that the above-named material witness(es) be released and remanded forthwith to the Department of Homeland Security for return to their country of origin.

**SO ORDERED.**

Dated: 4/10/08.

  
United States Magistrate Judge